

AMENDED IN SENATE MAY 7, 1997

**SENATE BILL**

**No. 564**

**Introduced by Senator Solis**

February 24, 1997

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An act to amend ~~Section~~ *Sections 3021 and 6323* of the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 564, as amended, Solis. Domestic violence: visitation.

*Existing law states that nonparent parties may not seek a determination of custody or visitation rights in a proceeding under the Domestic Violence Prevention Act. Existing law, however, excludes, among others, an alleged or presumed parent, foster parent, or step parent from its definition of "nonparent."*

*This bill would delete an alleged or presumed parent, foster parent, or step parent from the exclusion from the term "nonparent."*

Existing law authorizes a court to issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in specified proceedings, including a proceeding commenced under the Domestic Violence Prevention Act in a case where there is a marital relationship between the parties.

~~This bill would additionally authorize the court to issue an ex parte order regarding visitation in a proceeding commenced under the Domestic Violence Prevention Act in a case where the petitioner and the respondent are the parents of the same minor child delete the provision~~

*authorizing such an order where there is a marital relationship between the parties and instead provide that the authorization for an order under the Domestic Violence Prevention Act is subject to the above described provision prohibiting the granting of custody or visitation rights to nonparent parties.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 3021 of the Family Code is*  
2 *amended to read:*  
3 3021. This part applies in any of the following:  
4 (a) A proceeding for dissolution of marriage.  
5 (b) A proceeding for nullity of marriage.  
6 (c) A proceeding for legal separation of the parties.  
7 (d) An action for exclusive custody pursuant to Section  
8 3120.  
9 (e) A proceeding to determine custody or visitation in  
10 a proceeding pursuant to the Domestic Violence  
11 Prevention Act (Division 10 (commencing with Section  
12 6200)).  
13 Nothing in this subdivision shall be construed to  
14 authorize custody or visitation rights to be granted to any  
15 nonparent party to a Domestic Violence Prevention Act  
16 proceeding. As used in this section, “nonparent” does not  
17 include a biological parent, ~~alleged or presumed parent,~~  
18 adoptive parent, *or* pending adoptive parent, ~~foster~~  
19 ~~parent, or step parent.~~ By amending this subdivision  
20 during the 1995–96 Regular Session, it is the intent of the  
21 Legislature to restate existing law, and to clarify that  
22 nonparent parties may not seek a determination of  
23 custody or visitation rights through a Domestic Violence  
24 Prevention Act proceeding, but only through a  
25 proceeding for dissolution or legal separation, or an action  
26 to determine paternity ~~or a petition for guardianship~~ in  
27 accordance with the Uniform Parentage Act (Part 3  
28 (commencing with Section 7600) of Division 12), *or a*  
29 *petition for guardianship.*

(f) A proceeding to determine custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

SEC. 2. Section 6323 of the Family Code is amended to read:

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody of a minor child on the conditions the court determines.

(2) The court may issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding commenced under this division ~~in a case where the petitioner and the respondent are the parents of the same minor child or where there is a marital relationship between the parties.~~ *except as limited by subdivision (e) of Section 3021.*

(b) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(c) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in which a third person, specified by the court, is present, or

1 whether visitation or custody shall be suspended or  
2 denied.

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